REMARKS

Claims 1-54 are pending in the application.

Claims 1-54 have been rejected.

Claims 10, 23, 37, 44, 48, 50, 52, 54 have been amended, as set forth herein.

I.   CLAIM INFORMALITIES

Claims 10, 23, 37, 44, 48, 50, 52 and 54 have been amended to correct the claim informalities noted by the Office Action. With respect to Claim 14, Applicant notes that the claim was retyped (this application was transferred to the undersigned counsel, and the undersigned counsel did not have access to the electronic copy of the application, so all claims were manually re-typed) and due to an inadvertent re-typing error, the term "ore" was typed instead of "or". Applicant notes that the original Claim 14 (as filed) is correct, and Applicant has not currently amended Claim 14, but has presented Claim 14 with the correct term "or" instead of "ore".

II.   REJECTION UNDER 35 U.S.C. § 102

Claims 1, 4-5, 8-10, 13-17, 22-23, 28-29, 47 and 48 were rejected under 35 U.S.C. § 102(b) as being anticipated by McDonough (US Patent No. 5,625,748). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they

are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

McDonough recites a system that classifies communications into different topics. (Col. 4, Lines 27-34). The system includes a speech event frequency detector. (Col. 5, Lines 45-48). The speech event frequency detector identifies the frequency at which various words or phrases appear in a communication. (Col. 6, Lines 23-29). The communication is then classified based on the frequency that the words and phrases are used. (Col. 5, Lines 62-64). McDonough simply describes classifying communications based on the frequency at which words and phrases appear in the communications.

With respect to independent Claims 1, 10, 17, 23, 47, and 48 (and their dependent Claims), McDonough fails to show associating scores with different words and phrases detected by the system and using the scores to select an action to be performed. The Office Action asserts that McDonough discloses a score associated with each voice representation, citing Col. 6, lines 41-42. McDonough describes "topic" modeling and estimating parametric probabilistic models for event frequency in the form of multinomial distributions, etc. Col. 6, lines 30-42. It is unclear how these probabilistic models and distrubutions translate to "a score" for each stored voice representation. McDonough, therefore, fails to anticipate "one or more voice representations," where each voice representation is "associated with a score" as those features/elements are described in Applicant's specification.

In addition, McDonough fails to anticipate analyzing a voice message (or information) to "generate a total score associated with the voice message [information]" and performing one or more of the stored actions "based on the total score." The Office Action points to the summation of confidence scores over the speech data (Col. 7, lines 28-44) in support of its anticipation. However, McDonough appears to simply to use probabilities to detect the likelihood that a word or phrase is present in the speech, and then using it to calculate the <u>expected number of occurrences</u> of the word or phrase. In contrast, the claims recite that a score is associated with a particular stored voice representation (and for example, the scores may be different based on the identity of the voice representation). Based on this, not only is the number of times the word or phrase (ie., voice representation) is present in the speech, but the scores allow an overall score to be calculated – with the overall score providing the ability to weight various words/phrases with respect to each other (some may be more important than others, when detected). As a result, Applicant respectfully submits that the method of using confidence scores in McDonough does not provide a total score associated with the speech segment (at issue) based on the number of occurrences - McDonough is simply determining the expected number of occurrences, without reference to a total score based on the assigned score per stored voice representation.

Based on the foregoing, McDonough fails to show each and every element of Applicant's invention as recited in independent Claims 1, 10, 17, 23, 47, and 48 (and their dependent claims).

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 1, 4-5, 8-10, 13-17, 22-23, 28-29, 47 and 48.

III.   REJECTIONS UNDER 35 U.S.C. § 103

Claims 2, 11, 18, 24, 30, 32, 35-37, 39-41, 43-46 and 49-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Furui (Sadaoki Furui, "Digital Speech Processing, Synthesis, and Recognition," Marcel Dekker, Inc., New York, 1989, pp. 225-289). Claims 6-7, 20-21, 26-27 and 51-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Epstein (US Patent No. 6,327,343). Claims 3, 12, 19, 25, 31, 33-34, 38, 42, 45 and 53-54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Furui (Sadaoki Furui, "Digital Speech Processing, Synthesis, and Recognition," Marcel Dekker, Inc., New York, 1989, pp. 225-289), and further in view of Epstein (US Patent No. 6,327,343). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does

not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

As described above, independent Claims 1, 10, 17, 23, 30, 37, 41, and 44 are allowable over McDonough. In particular, *McDonough* fails to recite the use of "one or more voice representations" each "associated with a score," analyzing a voice message to "generate a total score associated with the voice message," and performing one or more actions "based on the total score." *McDonough* also fails to recite analyzing a voice message to determine if the voice message exhibits a "predetermined pattern of speech," where the predetermined pattern of speech represents "at least one of a tone of speech in the voice message and a frequency of the speech in the voice message."

The Office Action fails to indicate that the remaining references disclose, teach, or suggest these elements of the independent claims. Therefore, Claims 2-3, 6-7, 11-12, 18-21, 24-27, 31, 33-34, 38, 42, and 45 are therefore allowable due to their dependence from allowable claims.

Similarly, regarding Claims 51-54, the Office Action relies on Epstein simply to show the use of a computer readable medium. The Office Action fails to indicate that Epstein discloses the use of "one or more voice representations" each "associated with a score," analyzing a voice message to "generate a total score associated with the voice message," and performing one or more actions "based on the total score" as recited in Claims 51-52. The Office Action also fails to indicate that Epstein discloses analyzing a voice message to determine if the voice message exhibits a "predetermined pattern of speech," where the predetermined pattern of speech represents "at least one of a tone of speech in the voice message and a frequency of the speech in the voice message" as recited in Claims 53-54.

With respect to independent Claims 30, 37, 41, 44, 49, and 50 (and their dependent claims), McDonough fails to show analyzing the tone and/or frequency of speech in a voice message to determine which action to perform. The Office Action points to Furui as teaching this element/feature. Furui does not appear to describe performing one of the stored actions - as that term is described in the Applicant's specification - if the predetermined speech (a tone of speech or a frequency of speech) is found to occur. In addition, McDonough fails to disclose or describe analyzing a voice message to determine if the voice message exhibits a "predetermined pattern of speech," where the predetermined pattern of speech represents "at least one of a tone of speech in

the voice message and a frequency of the speech in the voice message" and performing one or more of the stored actions if the predetermined speech is found. Furui simply does not teach all of these elements/features omitted from McDonough. As a result, the proposed McDonough-Furui combination fails to disclose, teach or suggest each and every element of Applicant's invention as recited in independent Claims 30, 37, 41, 44, 49, and 50 (and their dependent claims).

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejections of Claims 2-3, 6-7, 11-12, 18-21, 24-27, 30-46 and 49-54.

IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.
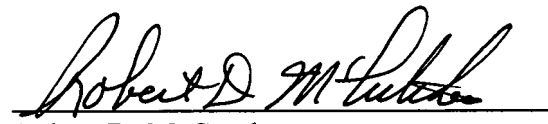
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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